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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 16  
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Sealy Technology, LLC

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Serial No. 75/369,284

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James A. Dimitrijevs of Calfee, Halter & Griswold for  
applicant.

Monique C. Miller, Trademark Examining Attorney, Law Office  
108 (David Shallant, Managing Attorney).

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Before Hairston, Walters and Holtzman, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Sealy Technology LLC has filed a trademark application  
to register the mark SEALY POSTUREPEDIC CROWN JEWEL for, as  
amended, "non-decorative bed pillows, not including linens  
to cover bed pillows," in International Class 20, and "non-  
decorative feather beds and mattress pads, not including  
linens to cover feather beds and mattress pads," in  
International Class 24.<sup>1</sup>

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<sup>1</sup> Serial No. 75/369,284, filed October 7, 1997, based on an allegation  
of a bona fide intention to use the mark in commerce in each class of  
goods.

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark CROWN JEWEL, previously registered for "bedspreads, blankets, sheets, pillowcases, towels, wash cloths, decorative fabric and upholstery fabric,"<sup>2</sup> that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See, *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort*

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<sup>2</sup> Registration No. 1,016,926 issued July 29, 1975, in International Class 24. The registration was renewed for a period of 10 years from July 29, 1995, and Section 8 and 15 declarations have been accepted and acknowledged, respectively. The owner of record is Fieldcrest Cannon Licensing, Inc.

*Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The Examining Attorney contends that applicant's mark merely incorporates registrant's mark in its entirety, and adds to it applicant's "house marks," which does not distinguish the marks. She argues that CROWN JEWEL is not a weak mark and, further, that the record contains no evidence of third-party registrations of CROWN JEWEL for similar goods to those of either applicant or registrant.

The Examining Attorney contends that applicant's and registrant's goods are closely related; that applicant's registration of CROWN JEWEL for mattresses and box springs does not entitle it to registration in this case; that the goods in this application are more closely related to registrant's goods than they are to mattresses and box springs; and that applicant has not established that the goods in this application are a natural expansion of its mattress and box spring business.

The Examining Attorney submitted copies of registrations owned by applicant for the marks SEALY, POSTUREPEDIC and SEALY POSTUREPEDIC, principally for mattresses and box springs; and a copy of applicant's

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Registration No. 1,422,873 for the mark CROWN JEWEL for mattresses and box springs.

In support of her position that applicant's and registrant's goods are related and travel through the same trade channels, the Examining Attorney submitted numerous third-party registrations for linens, including bed linens of the type listed in the cited registration. However, only one of these third-party registrations includes any bedding of the type identified in this application (mattress pads). The Examining Attorney also submitted excerpts from two catalogues advertising bed linens of the type listed in the cited registration; and an excerpt of a magazine article about using bed linens to decorate. Neither the catalogs nor the magazine include any of the goods identified in the application.

The Examining Attorney also submitted excerpts from several Internet web sites that offer, among other products, bed linens. Of eight Internet web sites offering bed linens of the type listed in the cited registration, two sites also offered feather beds and five sites also offered mattress pads. None of the evidence regarding bed linens included bed pillows. We note that the excerpted sites appear to be, like department stores, sites offering a wide range of goods, with bed lines comprising just one

of many categories of goods. As such, this evidence does not establish, by itself, that the identified goods may emanate from, or be associated with, a single entity, much less that purchasers have become accustomed to seeing both applicant's and registrant's goods emanate from a common source under the same mark.

Applicant states, and the Examining Attorney agrees, that its mark SEALY POSTUREPEDIC is well known.<sup>3</sup> Thus, applicant concludes, SEALY POSTUREPEDIC is the dominant portion of the mark SEALY POSTUREPEDIC CROWN JEWEL and will distinguish applicant's mark from other CROWN JEWEL marks.

Applicant contends that its intended use of the mark SEALY POSTUREPEDIC CROWN JEWEL in connection with the identified goods "is merely within the natural expansion of applicant's long-standing use of the mark CROWN JEWEL in association with mattresses and box springs"; and that the goods identified herein are at least as distinguishable from the cited registrant's goods as are the goods in applicant's CROWN JEWEL registration.

Applicant argues that its identified goods, like mattresses and box springs, "are all composed of cushioning material or a cushioning system enclosed within a non-

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<sup>3</sup> There is no evidence establishing the Examining Attorney's further conclusion that SEALY POSTUREPEDIC is applicant's house mark.

decorative fabric [and] the main function of such goods is to provide orthopedic comfort"; whereas, registrant's identified goods are decorative items used to cover applicant's goods and "provide an aesthetic cover."

Applicant argues, further, that registrant is no more entitled to protection for the mark CROWN JEWEL in connection with applicant's identified goods, based on the goods identified in registrant's registration, than applicant is based on its registration of CROWN JEWEL for mattresses and box springs. Applicant states "[e]ven if non-decorative pillows, feather beds and mattress pads may be considered within the natural expansion of both Applicant and Registrant, Applicant is entitled to registration, since Applicant is the first to apply for registration of the mark in connection with such goods."

Considering, first, the goods involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are.

*Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d

937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

It is clear that applicant's and registrant's goods are, at least, complementary goods, as all the goods involved are used either as beds, bedding, or as linens for bedding. However, applicant has drawn a reasonable distinction in describing its products as non-decorative functional items of bedding,<sup>4</sup> whereas the goods in the cited registration are clearly bed linens which, while serving

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<sup>4</sup> We take judicial notice of the definition in *The American Heritage Dictionary* (2<sup>nd</sup> college ed. 1985) of "featherbed" as "1. A mattress stuffed with feathers. 2. A bed having a feather mattress."

the function of covering items such as those identified in the application, are also largely decorative. The Examining Attorney has not established that these goods are sufficiently similar or related in such a manner that consumers will mistakenly believe that they emanate from, or are sponsored by, the same source.

We turn, next, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See, Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark.

*See, In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Registrant's mark and the CROWN JEWEL portion of applicant's mark are identical. In this regard, we take judicial notice of the definition of "crown jewels" in *Encyclopedia Britannica* (*britannica.com*, 1999-2000) as follows:

Royal ornaments used in the actual ceremony of consecration, and the formal ensigns of monarchy worn or carried on occasions of state, as well as the collections of rich personal jewelry brought together by various European sovereigns as valuable assets not of their individual estates but of the offices they filled and the royal houses to which they belonged.

In view of this definition, it is likely that consumers will consider the term CROWN JEWEL in a trademark to be laudatory in character and, thus, highly suggestive of the quality of the goods so identified.

While the word "posture" within the word POSTUREPEDIC may suggest that the use of applicant's mattresses and box springs, or the goods identified herein, improves posture, this requires multi-step reasoning and, thus, we find the SEALY POSTUREPEDIC portion of applicant's mark to be, for the most part, arbitrary. Further, the SEALY POSTUREPEDIC portion of applicant's mark is admitted to be well known in connection with, at least, mattresses and box springs, and

is likely to be perceived as the dominant portion of applicant's mark. Additionally, it is likely to be perceived as the dominant portion of the mark because it comprises the first two words of the mark.

We agree with the Examining Attorney that merely adding material to the mark of another does not avoid confusion. However, as the Examining Attorney noted, The Board, in the case of *In re Christian Dior, S.A.*, 225 USPQ 533, 534 (TTAB 1985), stated the following:

[W]here there are some recognizable differences in the asserted conflicting product marks or the product marks in question are highly suggestive or merely descriptive or play upon commonly used or registered terms, the addition of a housemark and/or other material to the assertedly conflicting product mark has been determined sufficient to render the marks as a whole sufficiently distinguishable. [citations omitted.]

We find the addition of SEALY POSTUREPEDIC to the highly suggestive term CROWN JEWEL to sufficiently distinguish applicant's mark from registrant's mark, particularly in view of the differences between applicant's and registrant's goods.

Therefore, in view of the marks and goods involved herein, we conclude that confusion as to the source or sponsorship of such goods is not likely. In so doing, we

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are also mindful of applicant's pre-existing registration for the mark CROWN JEWEL for mattresses and box springs.

*Decision:* The refusal under Section 2(d) of the Act is reversed.